

TERRY CAIN ET AL.

IBLA 74-272

Decided August 14, 1974

Appeal from a decision of the Bureau of Land Management District Manager, Medford, Oregon, dismissing a protest against a sale of timber in North Fork Deer Creek, Medford sale 74-42.

Affirmed.

Timber Sales and Disposals

A decision by a BLM District Office to proceed with a proposed timber sale, which was made after consideration of all relevant facts, and which decision is supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

APPEARANCES: Thomas M. Allen, Esq., Butler, Husk & Gleaves, Eugene, Oregon, for intervenor Cabax Mills; Donald P. Lawton, Esq., Office of the Solicitor, United States Department of the Interior, Portland, Oregon; Terry Cain, pro se.

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OPINION BY CHIEF ADMINISTRATIVE JUDGE FRISHBERG

Terry Cain, Hobert Lansdown, Steve Campbell, John Hurt, Vance Worden and Roger Murphy appeal from the decision of the Medford District Manager, BLM, dismissing their protest of a proposed timber sale in the North Fork of the Deer Creek drainage, secs. 8 and 17, T. 38 S., R. 6 W., W.M., Oregon.

The North Fork Extension timber sale, involving approximately 116 acres of Oregon and California revested land, was originally included in the Medford District Timber Sale Plan for Fiscal Year 1974, which had been made available to the public on June 22, 1973. The plan had been formulated after an exhaustive environmental analysis conducted by BLM. On February 6, 1974, the sale was advertised and a complete prospectus was made available to the parties. On February 25, 1974, three days prior to the date scheduled for the sale, appellants protested the sale contending, inter alia, that "there are certain rare and/or endangered species of both animal and plant life present within the forest designated for cutting."

On February 27, 1974, the District Manager dismissed the protest, declaring that "we have carefully reviewed every aspect of this sale and have concluded that the selective harvesting of this sale timber is a proper legal and silvicultural use of the area and that every reasonable precaution has been taken to minimize the environmental impact of the sale on the site, the surrounding area and the watershed." The sale was held on schedule and Cabax Mills was the successful bidder.

By letter received March 13, 1974, protestants appealed the decision of the District Manager to this Board. On appeal they argue that: 1) the timber sale layout does not provide sufficient protection to the watershed; 2) the timber sale layout appears to disregard the fragile nature of certain sites within the contract area; 3) the timber sale layout does not provide sufficient protection to the wildlife for their habitats. While the appeal of the protestants has a multi-faceted focus, it is equally clear that the dispute is essentially one grounded on differing perceptions of values and acceptable risks. This fact does not, of course, deprive this Board of either its authority or responsibility to independently examine and determine the cases before it. But this Board has often noted that, as a practical matter, "[i]n many matters which depend for their resolution upon the evaluation of technical data, the Secretary (and this Board and its predecessors) has not examined de novo the conclusions reached by his technical experts." Exxon Corp., 15 IBLA 345, 354 (1974). See also Crooks Creek Commune, 10 IBLA 243 (1973). It is incumbent in such cases that those protesting technical evaluations and findings involving the expertise of Departmental officials make a showing that the decision complained of is clearly in error. Crooks Creek Commune, *supra*. We can find no such showing in the case before us.

At best, appellants have merely shown a factual disagreement with the Departmental experts' evaluation of the impact of the North Creek Extension Timber Sale. And, indeed, the Regional Solicitor has argued that a number of the appellants' concerns are unwarranted. Thus, appellants argue that "the use of a stream bed as a loading station would seem to be negligent management." The Regional Solicitor notes that in actual fact "the landings for the settings adjacent to this stream are along the existing road." Similarly, the Regional Solicitor notes that of the 2,800 acres in the drainage, 1,600 will "probably never be logged for a variety of reasons." Furthermore, he points out that the areas to be harvested will be selectively logged so that wildlife cover largely remains.

Appellants have not shown that the decision of the District Manager was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Newton Frishberg
Chief Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

